In the Supreme Court

OF THE

United States

October Term, 1978

No. 78-1522

CECIL D. ANDRUS, Secretary of the Interior
Petitioner

v.

STATE OF UTAH

[redacted] STATE OF IDAHO [redacted] AMICUS CURIAE [redacted] BRIEF IN SUPPORT OF THE STATE OF UTAH

DAVID H. LEROY
ATTORNEY GENERAL
STATE OF IDAHO

W. HUGH O'RIORDAN
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES
DIVISION

Statehouse
Boise, Idaho 83720

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STATE OF UTAH

MOTION OF STATE OF IDAHO FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF IN SUPPORT OF THE STATE OF UTAH

DAVID H. LEROY
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MOTION OF STATE OF IDAHO FOR LATE FILING OF BRIEF AS AMICUS CURIAE IN SUPPORT OF STATE OF UTAH

Pursuant to Supreme Court Rule 42, the State of Idaho hereby respectfully moves the court for leave to file its brief *amicus curiae* bound with this motion.

The lateness of this brief is the result of illness and the limited size of staff. The court is urged to accept this brief which represents the views of one affected state.

The State of Idaho is comprised of approximately 52,933,120 acres of land with 63.2% being owned by the United States Government. The Idaho Admissions Bill, 26 Stat. L. 215 Ch. 656 as amended, granted the State of Idaho Sections 16 and 36 in every township of the state for support of its common schools. In furtherance of this legislation Congress enacted 43 U.S.C. §§ 851, 852 which allows selection by the State of lieu lands to replace those which for some reason were unavailable to the State. Negotiations with the federal government to gain lands under this statute have become increasingly complex. The federal government has created a maze of bureaucratic regulations and policies all resulting in a complete frustration of the intent of Congress. The attitude of the Interior Department has been designed to frustrate, stall and impede the lieu land selections of the State of Idaho. The efforts by the United States Department of the Interior to deny the in lieu land selections has been previously rejected by this court in *Payne v. New Mexico,* 255 U.S. 364 (1921) and *Wyoming v. United States,* 255 U.S. 489 (1921). Fifty nine years later the Department still seeks to deny in lieu land selections under the broad catch-all heading of "Secretarial discretion."

As this brief will show, this "discretion" sought by the Secretary is so broad as to have no legal basis or standard. In fact, the Secretary seeks not discretion but an end to the in lieu land program as created by Congress.

The State of Idaho has initiated litigation in Federal District Court for the District of Idaho seeking to protect the selected land selections from waste pending resolution of the issue by this court. The accompanying brief details the frustrations experienced by Idaho and brings to this Court the perspective of another affected state.

Accordingly, the State of Idaho respectfully requests leave to file the annexed brief *amicus curiae.*

Respectfully submitted,

DAVID H. LEROY
ATTORNEY GENERAL
STATE OF IDAHO

W. HUGH O'RIORDAN
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES

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BRIEF OF STATE OF IDAHO AS AMICUS CURIAE IN SUPPORT OF STATE OF UTAH

DAVID H. LEROY
ATTORNEY GENERAL
STATE OF IDAHO

W. HUGH O'RIORDAN
DEPUTY ATTORNEY GENERAL
CHIEF, NATURAL RESOURCES
DIVISION

Statehouse
Boise, Idaho 83720

INTRODUCTION

The State of Idaho is composed of 52,933,120 acres of land, with 33,461,313 acres of that land, or 63.2% being owned by the United States government and its agencies. The Idaho Admission Bill, 26 Stat. L. 215 Ch. 656 as amended, (1890) granted the State of Idaho sections 16 and 36 in every township of the state for support of the schools. The Constitution of the State of Idaho declares that:

> The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public free common schools. Idaho Const. Art. 9 § 1.

In furtherance of this goal the Idaho Constitution provides that the public school fund shall consist of the proceeds of ". . . such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands, or those granted in lieu of such; . . . " Idaho Constitution Art. 9 § 4.

In accepting the offer of the Federal Government, Idaho entered into a trust relationship designed to benefit the school children of Idaho. The grant of school lands and the acceptance by the State created a solemn compact between the United States and the State. *Cooper v. Robert,* 184 U.S. 143 (1855). This statute states that " . . . other lands of equal acreage are hereby appropriated and granted, and may be selected, in accordance with the provisions of Section 852 of this title . . . "

The policy behind this statute is simple,

> "In giving a state sections in place it was intended that a state would acquire a proportionate part of all classes of

land within its boundaries, and the authorization to make selections *on the basis of equal acreage rather than equal value* carries this policy forward." Report of the Interior Department (1958 U.S. Code Cong. and Adm. News, P. 3965, Emphasis added).

The Interior Department has consistently recognized the right of states to select lands on an equal acreage standard. This is what Congress intended in order to give the western states sufficient funds for the support of the public schools.

In the late 1960's this policy began changing. The Interior Department with its numerous constituencies turned away from the departmental mission of aiding the public schools of the west.

ARGUMENT

I.

THE HISTORY OF LIEU LAND SELECTIONS IN IDAHO ESTABLISHES A BREACH OF TRUST BY THE UNITED STATES

At present, the State of Idaho has outstanding lieu land selections for approximately 24,000 acres of land. Idaho has made these selections pursuant to 43 U.S.C. §§ 851, 852 and the regulations of the Interior Department. Following are the outstanding selections of the State of Idaho:

Selection List #	Name	U.S. Serial #	Remarks
951	Hoo Doo	I-7318	Original selection made in letter form specifying it was to be an official lieu selection filing. Letter dated September 27, 1973

and included 4,539.15 acres. All other forms required were submitted with the letter except the normal selection list showing the base land. On September 14, 1978, amended selection list #951 was filed, bringing the total land selected to 5,019.15 acres.

954	Hoo Doo Addition	I-15035	Official selection filed on December 20, 1978 and includes 1,185.49 acres.
955	Grand-mother Mountain	I-15036	Official selection filed on December 20, 1978 and includes 3,817.73 acres.
956	Latour Creek	I-15037	Official selection filed on December 20, 1978 and includes 9,849.96 acres.
957	Payette Lakes	I-15038	Official selection filed on December 20, 1978 and includes 1,840.00 acres.
958	Miscell-aneous	I-15039	Official selection filed on December 20, 1978 and includes 863.59 acres.
959	Marble Creek	I-15040	Official selection filed on December 20, 1978 and includes 1,439.39 acres.
952	Mineral land Selection —	Not Assigned	Official selection filed on November 7, 1977 and includes 760 acres. Lands selected are

Caribou County

considered valuable for phosphate and mineral base lands were used in the selection. The BLM advised by letter dated July 18, 1978 that the state selection involved lands currently under BLM lease or permit, and if the state selections are consummated, the mineral or minerals for which the leases or permits are issued would be reserved to the United States. The Department replied by letter October 26, 1978 that due to on going litigation concerning lieu selection that this list would not be withdrawn or amended at this time and that no further action to process the application be taken until the Department requested further action.

Each of these selections has been made in good faith and after extensive discussions with the Department of the Interior. For one reason or another the United States Department of Interior has refused to turn over the lands.

A. The Conduct of the Department of the Interior Has Not Been Consistent With Its Congressionally Created Trust Obligations.

Once Idaho had made lieu land selections, the duty of the Secretary was limited. As stated in an earlier lieu lands case,

> By it Congress said in substance to the state: if you will waive or surrender your title tract in the reservation, you may select and take in lieu of it a tract of like area from the unappropriated non-mineral public lands outside the reservation. Acceptance of such a proposal and compliance with its terms confer a *vested* right in the selected land which the land officers cannot lawfully control or disregard. *Payne v. New Mexico,* 255 U.S. 367, 370 (1921).

Moreover, in *Wyoming v. United States,* 255 U.S. 489 (1921) the Supreme Court recognized the equitable rights of the state to selected lieu lands.

> Equity then regards the state as the owner of the selected tract and the United States as owning the other [the base land]; and this equitable ownership carries with it whatever advantage or disadvantages may arise from a subsequent change in conditions whether one tract or the other be affected. *Wyoming v. United States* at 497.

Congress then has created a strict and continuing trust obligation upon the public land states in the school land grant statutes.

These enactments " . . . are set apart and given special, independent treatment, much akin to the special preference and treatment of Indians recognized in *Morton v. Mancari,* 417 U.S. 535 (1974)." *Utah v. Andrus,* at 586 F. 2d 756, 769 (1978). This grant legislation, in creating a binding trust obligation between the United States and Idaho, is " . . . an absolute grant, vesting title for a specific purpose." *Utah v. Andrus,* at 758.

> . . . it is strikingly clear that Congress did grant the states broad rights in effecting indemnity selections. There is no question that the "equal acreage" language

originally set forth in § 851, *supra*, has been retained throughout its amendatory history. At no time has the Congress used the "equal value" reference. *Utah v. Andrus*, 767, 768.

Idaho therefore, in selecting the lands now in issue, became equitable owner of those lands. By not turning those lands over to the State of Idaho the Secretary of Interior has breached the trust relationship with Idaho.

B. The Attempt by the Secretary to Create an Open-Ended Condition Precedent to Lieu Land Selections Is Improper.

The Secretary of the Interior, in placing roadblocks to Idaho's lieu land selections, has not denied the efficacy of 43 U.S.C. §§ 851 and 852, but has instead urged that § 43 U.S.C. § 315(f) of the Taylor Grazing Act when coupled with Executive Order 6910 establishes a mechanism which allows the Secretary to determine which lands are to be given as in lieu selections. This discretionary authority asserted by the Department is broad and for all intents and purposes unlimited.

The position of the Secretary while erroneous is not surprising. In June of 1970 the Public Land Law Review Commission (PLLRC) noted the tendency of the Department of the Interior to resist land selections. The report stated:

> Notwithstanding the progressive statutory liberalization of the states' rights to select indemnity lands, the Department of the Interior (because of a view that it must preserve the bulk of the public domain in Federal ownership) *has tended to resist lieu selections* when the Bureau of Land Management believes the value of the selected lands exceeds the value of the lost land. PLLRC at 246 (Emphasis added.)

This tendency to resist lieu land selections has manifested itself in a never ending series of road blocks. The issue now has narrowed down to an interpretation of the Taylor Grazing Act.

Contrary to the assertion of the Secretary the Taylor Grazing Act does not confer upon the Interior Department authority to classify lands within a grazing district as a condition precedent to the selection of lands by the states. This is so because, first, § 1 of the Taylor Grazing Act by specific language exempts land grants to the states.

> *Nothing in this chapter shall be construed in any way to diminish, restrict, or impair any right which has been heretofore* or may be hereafter initiated under existing law validly affecting the public lands, . . . except as otherwise expressly provided in this chapter, nor to *affect any land heretofore* or hereafter surveyed which, except for the provisions of this chapter, *would be a part of any grant to any state* . . . [Emphasis added.] 43 U.S.C. § 315.

Idaho, as the recipient of a specific land grant under the Admission Act 26 Stat. L. 215, Ch. 656, is exempted from the workings of this statute.

Second, the Secretary's attempt to rely on § 7 of the Taylor Grazing Act, 43 U.S.C. § 315(f), as specific authority overturning 43 U.S.C. §§ 851, 852 fails to distinguish between private rights and public rights. While § 7 gives the Secretary authority to classify land grant and selection rights, it specifically states, " . . . such lands shall not be subjected to disposition . . . until after the same *have been classified and open to entry*. 43 U.S.C. § 315(f) [Emphasis added.] "Entries" to public lands refer to private land entries and not to land grants given to states.

In *Lewis v. Hickle,* 427 F.2d 673, 646 (9th Cir. 1970) the Ninth Circuit distinguished the Secretary's authority for land grants from the authority under the Taylor Grazing Act.

> *Payne v. New Mexico* involved the Secretary's denial of an exchange under an Act granting New Mexico the right to select certain lands for the support of common schools. However, that case and others like it are inapposite since they arose under statutes granting interests in lands once certain conditions had been complied with . . . Under the Taylor Grazing Act the power conferred on the Secretary is much broader than that of determining if the applicant has met the conditions prescribed by Congress. 427 F.2d at 676. [Emphasis added.]

Other courts have made the same distinction. See *Wilcoxson v. United States,* 313 F.2d 884 (D.C.Cir. 1963); *Ferry v. Udall,* 336 F.2d 706 (4th Cir. 1964).

Given the fact that § 1 of the Taylor Grazing Act specifically excludes grants to states from the workings of the statute, it is clear that Idaho's lieu land selections are exempt from the statutes.

Congressional history supports this conclusion.

> It is proposed to amend Section 7 of the Taylor Grazing Act so as to provide a more practicable and satisfactory method of classification of lands within a grazing district and to make available *for private entry* lands which are more valuable for other purposes than grazing. Senate Report No. 2371, 74th Cong., Second Sess., June 15, 1936, 2 [Emphasis added.]

Statutory construction and legislative history strongly support Idaho's position that the Taylor Grazing Act does not create a condition precedent to lieu land selections.

II.

THE SECRETARY IN ATTEMPTING TO GAIN BROAD DISCRETIONARY AUTHORITY OVER LIEU LAND SELECTIONS IS ACTING CONTRARY TO THE UNEQUIVOCAL INTENT OF CONGRESS

The procedures established by Congress for selecting lieu lands is simple. 43 U.S.C. § 852 provides that the state may select lands from any unappropriated, surveyed or unsurveyed public lands within the state. Lands mineral in character, however, may only be selected to the extent that the applicable base lands are also mineral in character. This limitation also applies to lands selected in areas of known geologic structures for production of oil and gas. Congress has in essence stated that once a qualified state such as Idaho selects lands pursuant to 43 U.S.C. §§ 851, 852, the Secretary has an affirmative obligation to clearlist the lands.

A. The Secretary in this Action is Attempting to Relitigate the Public Interest Criteria Rejected by this Court in *Payne v. New Mexico* and *United States v. Wyoming*.

The Secretary in arguing that the Taylor Grazing Act of 1934 coupled with Executive Order 6910 " . . . effectively overturned *Payne* and *Wyoming* by restoring to the Secretary his traditional discretion to control the selection process in the public interest." (Brief of Petitioner at 24-30), goes too far. According to the theory urged upon this court by the Secretary, the Taylor Grazing Act of 1934 created a *tabula rosa* and allowed the Secretary to exercise complete discretion over lieu land selections.

Two factors mitigate against the Secretary's position. First, these decisions are strikingly similar to the case at

hand and second, as established in Argument I, the terms and history of the Taylor Grazing Act do not support such a sweeping contention.

In *Payne v. New Mexico,* 255 U.S. 367 (1921) this Court rejected arguments of the Secretary for an open ended discretionary authority over in lieu land selections by stating,

> But it is said that as the selection is "subject to the approval of the Secretary of the Interior," no right can become vested nor equitable title be acquired thereunder unless and until his approval is had; and therefore that the rule just stated is not applicable. *To this we cannot assert.* Payne at 371. [Emphasis added.]

The power of the Secretary is ". . . Judicial in its nature . . ." Payne at 371. This Court further stated in language equally appropriate today that ". . . this view has been recognized and applied by the land department, although not with uniformity." at 342.

In *Wyoming v. United States,* 255 U.S. 489 (1921) an attempt by the Interior Department to judge the validity of the land selected by changed circumstances was rejected. Here the court stated,

> Equity then regards the state as the owner of the selected tract, and the United States owning the other; and this equitable ownership carries with it whatever advantage or disadvantages may arise from a subsequent change of conditions, . . . Wyoming at 497.

The issues before this court in *Payne* and *Wyoming* were remarkably similar to those asserted today. In fact, a reading of the briefs from the October terms of 1919 and 1920 magnifies the impact of the similarities of these cases to the one at hand.

> The entire case of the appellants may be stated thus — That an executed exchange of lands between a State and the United States implies an offer and acceptance and that such exchange requires the act of two parties — the State and the United States *acting through the Secretary.*
>
> ***
>
> The major difference between us and the appellants, however, is over their claim that in the matter of an exchange the United States acts through the Secretary. *The United States acts through Congress we think, and did so act when it made the grant of lieu lands* which was very solemnly accepted by the State several years ago simultaneously with its acceptance of the grant of the specific school sections. P. 26 and 27. [Emphasis added.] Brief of Appellee, *Payne v. New Mexico.*

Only the argument by the Secretary regarding the Taylor Act is new. When taken within context of the 1919 and 1920 briefs the bootstrap nature of this argument is readily apparent.

The strong statements of this court regarding lieu land selections are equally applicable today. The Secretary is merely attempting to relitigate issues resolved by this Court fifty-nine years ago.

B. The Classification Procedure Urged by the Secretary Is Fictitious and Based Upon No Discernible Standard.

While the Secretary has asserted that the classification procedure prior to lieu land selection is needed to assure effective administration of the public lands, the classification procedure established by the Secretary is based upon no discernible standard.

The equal value criteria urged by the Secretary is arbitrary. As the Tenth Circuit Court pointed out.

> Thus, at this time, it seems that we can safely relate — based upon the arguments presented and the record before us — that the criteria, processes and materials for determination of the "equal value" urged by the Secretary are non-existent, or otherwise so vague as to presently fall within the realm of guesswork or speculation. We believe that it is most unlikely that Congress intended to vest such discretion in the Secretary in light of the historical background leading to the enactment of the "in lieu" statutes . . . *Utah v. Andrus,* at 760-61.

The Public Land Law Review Commission noted the invalidity of the value criteria urged by the Interior Department.

> It is apparent from the preceding discussion that present law affords no explicit support for an "equal value" test. Indeed, the executive branch sought to have the 1966 lieu selection amendments include a provision denying the states the right to select lands valuable for leasable minerals, unless the lost mineral lands were of equal value. Neither the House of Representatives or the Senate approved the proposal, and the *Senate report rejected the suggestion* as "extraneous." PLLRC at 246 [Emphasis added.]

The PLLRC Report goes on to discuss the Secretary of the Interior's approval of guidelines despite the congressional refusal to adopt the equal value restriction.

> Under these guidelines, values are estimated for lost lands in their "native" condition, i.e., at time of grant, and for selected lands in their "present" conditions, i.e., at time of selection. PLLRC at 246.

The unfairness of these guidelines is obvious. What is also obvious is the cynicism of the Department in urging a value criteria which is in essence fictitious.

The Secretary's classification procedure in Idaho has resulted in delay without there being any discernible standard.

After 85 years the State of Idaho is trapped in a bureaucratic maze of conditions and interpretations unilaterally imposed by the Secretary. These conditions have resulted in loss of funds for school children of Idaho.

In one lieu land selection all five members of the Idaho State Board of Land Commissioners (comprised of the Governor, Secretary of State, Attorney General, State Auditor and Superintendent of Public Instruction) urged the Secretary to end what had been four years of delay.

> The Idaho State Board of Land Commissioners has granted audience to any and all who have requested the opportunity to appear before them. This includes state agencies, Fremont County Commissioners, Fremont County Planning and Zoning Commissioners, and other citizens. This Board, the supreme land authority in Idaho gave a great deal of time to people who protested and have now reached a decision. Due process was afforded; the debate has to end. We, the undersigned members of the State Board of Land Commissioners urge you to proceed with deliberate speed in the satisfaction of these selections, leading to the clear listing of these lands to the State of Idaho at the earliest possible time. (Appendix A.)

The result of the March 22, 1976 letter from the State Board of Land Commissioners was a response from the Secretary of the Interior dated April 14, 1976, informing the

State of Idaho that a decision would be reached following continued analysis of the problem. This letter is attached hereto as Appendix B. Two days later, on April 16, 1976, the State received a second letter, this one from the Deputy Assistant Secretary of the Interior stating that the information available was insufficient to make a final decision. (It should be noted that this was after approximately four years of consideration and at least one environmental impact analysis). The entire matter was returned to the State Director of the Bureau of Land Management for further study and investigation. The letter informs the State that:

> We regret this delay; however, we must have a firm understanding of environmental, social, and economic impact of our decision.

This correspondence demonstrates that the environmental, social and economic studies will go on indefinitely. Appendix D is a memorandum from the State Director of BLM to the Director of the Idaho Department of Lands admitting that new requirements had been added. The memorandum states,

> Standards and requirements have significantly increased since these documents were prepared. Also we were proceeding on the assumption that the matter was essentially an administrative title transfer involving no definable environmental impacts.

This memorandum from the Director of BLM to the State Director of Idaho clearly establishes that a complicated and obtuse procedure of review was added by the Secretary. From these procedures it is clear that the "discretion" now urged by the Secretary is very arbitrary.

Idaho is still struggling with the arbitrary decisions of the Secretary. Most recently Idaho discovered that the Secretary

was leasing and cutting timber on lands selected by the State. On March 22, 1979, the State Director of BLM detailed the "income producing activities" of the lands selected by the State of Idaho. [Appendix E.]

The extent of Secretarial discretion is great indeed. What the Secretary argues for in this case is extensive authority to select for the State of Idaho which lands are to be given as in lieu selections.

CONCLUSION

Lieu land selections in the State of Idaho as in the State of Utah have been stalled by arbitrary and never ending bureaucratic maneuvers. The Secretary in this case seeks more authority to deny the western states their School Indemnity Land Selections. The State of Idaho urges this Court to affirm the decision of the Tenth Circuit Court of Appeals which recognizes the right of the western states to their lieu land selections.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the_____day of October, 1979, three copies of the MOTION OF STATE OF IDAHO FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF IN SUPPORT OF THE STATE OF UTAH were mailed, postage prepaid, to:

HONORABLE WADE MCCREE
SOLICITOR GENERAL
DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20530

ROBERT B. HANSEN
ATTORNEY GENERAL
STATE OF UTAH
236 STATE CAPITOL
SALT LAKE CITY, UTAH 84114

and further that all parties required to be served were served.

Respectfully submitted,

DAVID H. LEROY
ATTORNEY GENERAL
STATE OF IDAHO

APPENDIX A

22 MARCH 1976

The Honorable Thomas S. Kleppe
Secretary, Department of The Interior
Interior Bldg., C St. Between 18th & 19th N.W.
Washington, D.C. 20240

Dear Mr. Secretary:

The State of Idaho is attempting to obtain title to lands as indemnity for lands pre-empted by the United States through the creation of the National Forests, Parks, Historic Monuments, Indian Reservations and other causes. The State Board of Land Commissioners is a constitutional board made up of the Governor, Secretary of State, Attorney General, State Auditor, and Superintendent of Public Instruction. This board has broad discretionary power and complete authority over acquisition and disposition of all lands held in the name of the State of Idaho. The courts have ruled the board has quasi-judicial authority. The authority of this board over state land matters in Idaho is recognized by the Bureau of Land Management, Washington Office and Idaho State Office.

To aid in this effort, the Idaho Legislature created a bi-partisan committee with members from both houses for the purpose of studying and recommending to the State Board of Land Commissioners concerning selections to resolve this long-standing matter.

On 16 November 1972 the State filed selections on certain lands in Fremont County, Idaho, in the vicinity of the Island Park Reservoir. This selection includes State Selection Lists Numbers 915-925 and 945-949; Idaho State BLM Office

Number I-6307-6317 and I-6302-6306. The State Office of the BLM has completed its processing of these selections. We are advised that nine protests opposing these selections have been filed with the Secretary of The Interior.

The Idaho State Board of Land Commissioners has granted audience to any and all who have requested the opportunity to appear before them. This includes state agencies, Fremont County Commissioners, Fremont County Planning and Zoning Commission, and other citizens. This board, the supreme land authority in Idaho, gave a great deal of time to people who protested and have now reached a decision. Due process was afforded; the debate has to end.

We, the undersigned members of the State Board of Land Commissioners, urge you to proceed with deliberate speed in the satisfaction of these selections, leading to the clear listing of these lands to the State of Idaho at the earliest possible time.

Respectfully,

/s/ _____
CECIL D. ANDRUS, GOVERNOR AND PRESIDENT OF THE STATE BOARD OF LAND COMMISSIONERS

/s/ _____
PETE T. CENARRUSA, SECRETARY OF STATE

/s/ _____
WAYNE L. KIDWELL, ATTORNEY GENERAL

/s/ _____
JOE R. WILLIAMS, STATE AUDITOR

/s/ _____
ROY TRUBY, SUPERINTENDENT OF PUBLIC INSTRUCTION

/s/ _____
GORDON C. TROMBLEY, SECRETARY & DIRECTOR, DEPARTMENT OF LANDS

GCT: fb

cc: SENATOR FRANK CHURCH
SENATOR JAMES A. MCCLURE
CONGRESSMAN STEVEN D. SYMMS
CONGRESSMAN GEORGE HANSEN
IDAHO STATE DIRECTOR, BLM
IDAHO STATE LAND GRANTS COMMITTEE

APPENDIX B

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

In Reply Refer To:
2621 (322)
I-6307 et al.
13552

Dear Governor Andrus:

This is in reply to your letter of March 22, 1976, co-signed by the other members of the State Board of Land Commissioners, regarding the State indemnity selections filed by your office.

As mentioned in your letter, several protests to the initial classification decision of the Bureau of Land Management's Idaho State Director have been received by our Office. We are considering as expeditiously as possible these protests, as well as, the information upon which the BLM Idaho State Director made his decision. As soon as this information has been analyzed, a final classification decision will be made. We will make certain you are notified promptly when this final decision is reached.

With best wishes.

Sincerely yours,

/s/ _____
THOMAS S. KLEPPE
SECRETARY OF THE INTERIOR

HONORABLE CECIL D. ANDRUS
GOVERNOR AND PRESIDENT OF THE STATE
BOARD OF LAND COMMISSIONERS
IDAHO DEPARTMENT OF LANDS
STATE CAPITOL BUILDING
BOISE, IDAHO 83720

APPENDIX C

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

In Reply Refer To:
2620 (322)
I-6307 et al.

Dear Governor Andrus:

This is in further reply to your letter of March 22, 1976, cosigned by the other members of the State Board of Land Commissioners, regarding the State indemnity selections filed by your office.

We have made a detailed study of the facts associated with the classification of the lands that you identified for State indemnity selection. From this analysis, we have concluded that there is presently insufficient information available to address and answer the protests or to determine if the classification is proper. Because of this situation, we have vacated the initial classification decision of the Bureau of Land Management's Idaho State Director and remanded the cases to him for further study and investigation.

We have also notified the State Director that your existing applications will be preserved and will continue to serve as the basis for the future analysis. We would like to emphasize that we have not rejected your applications nor have we made any decision as to the suitability of the lands for State indemnity selection. Decisions pertaining to the proper land-use classification and subsequently those regarding your applications will be made after this study has been completed.

We regret this delay; however, we must have a firm understanding of the environmental, social, and economic impacts of our decision.

When the Idaho State Director has completed his study and has issued his decisions, you will be given the opportunity to make comments or suggestions both to him and to this Office as appropriate. All groups and individuals who have expressed an interest in this case will also be given this opportunity so that we might best determine actions that are in the public interest.

Sincerely yours,

/s/ _____
DEPUTY ASSISTANT
SECRETARY OF THE INTERIOR

HON. CECIL D. ANDRUS
GOVERNOR AND PRESIDENT OF THE STATE
BOARD OF LAND COMMISSIONERS
IDAHO DEPARTMENT OF LANDS
STATE CAPITOL BUILDING
BOISE, IDAHO 83720

APPENDIX D

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Mr. Gordon Trombley, Director
State of Idaho, Dept. of Lands
State Capitol Building
Boise, ID 83720

Dear Gordon:

I am now able to supply additional information concerning the proposed Island Park lieu selection.

I find that protests of classification decisions are not considered by the Interior Board of Land Appeals; instead they are considered directly by the Secretary's Office. Staff review of the supporting documents, consisting primarily of the Land Report and the Environmental Analysis Report, indicated these documents are deficient as a basis for Departmental consideration. Standards and requirements have significantly increased since these documents were prepared; also we were proceeding on the assumption that the matter was essentially an administrative title transfer involving no definable environmental impacts.

Enclosed is a copy of instructions we have received dated April 30, 1976. You will note that we have a great deal of work to do, including an update of our Management Framework Plan (MFP) and reworking our Land Report and Environmental Analysis Report (EAR). Assistance from the State in developing data and analyses dealing with the water and wildlife resources, in preparing the historic analysis of the State's land disposal system (requested by the

April 30 instruction) and in the conduct of any needed public meetings to resolve conflicts, would expedite the process.

I think there is quite a lot of misunderstanding on the part of the Legislative Committee as well as the State Land Board as to the details of this proposal, including the magnitude of opposition. Enclosed is a summary of significant actions concerning this proposal that may be of help to bring everyone up to date.

I'm not optimistic that we can overcome the existing conflicts in a manner adequate to pave the way for completion of the selection as presently proposed. However, we are more than willing to give it another try if the State so desires. We may wish to reconsider the matter and delete the acreages that are of special concern to the State Parks and Fish and Game Departments.

We look forward to meeting with you again on May 11.

Sincerely yours,

/s/ _____
WM. L. MATHEWS
STATE DIRECTOR

Enclosures
Cy 4/30 memo from WO
Summary significant actions

APPENDIX E

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

Mr. Gordon C. Trombley
Idaho Department of Lands
Statehouse
Boise, Idaho 83720

Dear Mr. Trombley:

This is in further response to your letter of January 22, 1979, regarding your most recent State indemnity selections. In contrast to your opinion that equitable title passes upon your selection of lands, it remains the policy of the Secretary of the Interior that he has discretionary authority to determine which lands pass into State ownership through indemnity selections. However, since this discretionary authority has been successfully challenged by Utah in the Ninth Circuit Court, we can understand the reasoning behind your statement and your request for this information.

Enclosed you will find a summary of income-producing activities for the lands which you have selected. This was prepared in our Coeur d'Alene District Office. If you have any specific questions, you should direct them to Martin J. Zimmer, Coeur d'Alene District Manager.

Sincerely yours,

/s/ _____
WILLIAM L. MATHEWS
STATE DIRECTOR

Enclosure:
As stated
cc: District Manager,
Coeur d'Alene (w/o encl.)

In Reply Refer To:
2621 (480)
I-7318, I-15035, I-15036,
I-14357, I-15037, I-15039,
I-15040

The date requested for each selection area is listed as follows:

1. North Hoodoo and New Port Hill Selection — I-7318 of 9-27-73 as received by the Bureau of Land Management on 9-28-73:

   Hoodoo Timber Sale Contract 11060-TS4-013 — Date this contract was approved was on August 27, 1974. It was sold at public auction on June 25, 1974. All field work was completed for this sale prior to October 1, 1973.

	Timber Sold			
		Appraised	*Contract*	*Total*
	Volume	*Value*	*Bid Value/*	*Value*
Species	*MBf*	*MBf*	*MBf*	*Paid*
Douglas fir	1,449	27.50	54.00	78,246.00
Grand fir	1,392	20.05	45.00	62,640.00
Western larch	1,279	23.90	49.00	62,671.00
Western White Pine	877	83.25	85.00	74,545.00
Lodgepole Pine	369	16.20	16.20	5,977.80
Western Red Cedar	63	33.65	40.00	2,520.00
Western Hemlock	14	19.50	19.50	273.00
Englemann Spruce	6	32.40	32.40	194.40
Alpine fir	- - -	19.50	19.50	- - -
Ponderosa Pine	139	70.55	70.55	9,806.45
	5,588			$296,873.65

Contract Modification addition 54MBf valued at $ 2,800.00
Unauthorized cutting on contract area-16MBf-Value Collected $ 992.00
Total Volume Removed-5,658MBf Total Value received $300,465.65

This contract was terminated on August 29, 1978.

Road easement I-4338 was obtained to harvest timber on New Port Hill land which was selected under I-7318. This sale was terminated about 1972.

2. South Hoodoo Selection I-15035 made December 22, 1978, Curtis Creek Timber Sale field work was completed prior to November 1, 1978. Timber is to be sold in a joint sale with the U.S. Forest Service and is going to be appraised and a contract be prepared as soon as the remaining field work is completed in March. The Forest Service is planning to submit both the BLM and USFS timber cruise data for volume compilation by April 1, 1979.

   It is anticipated a total of about 8MBf per acre of cutting area will be removed. This sale will probably be offered on or about July 1, 1979. Actual volume by species and its sale value may be obtained when it is offered and snd sold at public auction.

   Road rights-of-way of record effecting both Hoodoo Selections are as follows:

   I-8817 is the BLM road constructed and used to remove timber sold under contract 11060-TS4-013. Also the road right-of-way reserved by PLO 5421 to the U.S. Forest Service was also constructed to remove timber sold under this contract and for later contracts from adjoining lands on Hoodoo Mountain. Right-of-way under I-14651 was issued to the U.S. Forest Service to extend this road system.

3. Grandmother Mountain Selections I-14357 made December 16, 1977 and amended January 16, 1978 and I-15036 made December 22, 1978.

The Two-Bit Flewsie Timber Sale contract #11060-TS8-010 was sold on September 25, 1978. Most of the field work for this sale was done prior to November 1, 1978. Some final boundary and road right-of-way posting was done by or about July 1, 1978. This timber sale contract will be supervised jointly by the U.S. Forest Service and the BLM under a Forest Service contract. The Bennett Tree Farms, Inc. was notified on September 26, 1978 it was the apparent high bidder for the sale. The final awarding of the contract was delayed pending the Forest Service obtaining a satisfactory road construction bid.

Species	*Volume MBf*	*Appraised Value MBf*	*Bid Value MBf*	*Total Value*
Grand fir	1,430	9.86	131.00	$187,330.00
Larch	445	63.86	93.00	41,385.00
Lodgepole Pine	65	13.20	13.20	858.00
White Pine	305	165.64	165.64	40,520.20
Douglas fir	205	56.29	56.29	11,539.45
Cedar	510	176.38	226.00	115,260.00
Hemlock	180	13.89	13.89	2,500.20
TOTAL	3,140			$399,392.85
Pulp	5	1.00	1.00	5.00
Cedar Products	165c units	1.00	1.00	165.00
				$399,562.85

This contract has not been issued and will be delayed until a road contract is let. No timber will be removed until road construction is initiated. A copy of the timber sale volume summary, advertised timber sale notice cover page and notice of apparent high bidder is attached.

On the Grandmother Mountain Selections, the following USFS and BLM road rights-of-way were noted:

I-014136 and PLO 4767 reserving mainline road right-of-way across public land in Secs. 11 & 12, T.42N., R.2E., B.M. This public land has a small campground located upon it adjacent to the junction with Gold Center Creek.

Road easement I-5139 was obtained from the Potlatch Corporation to the lower Merry Creek timber sale which was terminated about five years ago. I-7343 was the road right-of-way built on and used to harvest the Merry Creek timber sale.

Road right-of-way I-013067 was for roads built to remove timber harvested from public lands in Secs. 34 & 35, T.43N., R.2E. prior to 1965.

Access road and powerline right-of-way under I-2957 was issued to Bonneville Power for the Dworshak-Hotsprings line across public lands in this selection.

Road right-of-way I-7343 was built and used to harvest the West Elk No. 2. Timber sale in Sec. 12, T43N., R.1E. B.M. which was terminated about 1974. Road easement I-4882 was obtained from Potlatch Corporation to be used in the harvest of this timber.

Road right-of-way I-1422 & I-5868 were obtained from the USFS by the BLM to be used in connection with the East Elk and West Elk No. 2 sales which were terminated prior to 1974.

The U.S. Forest Service also obtained road rights-of-way from the BLM under serial no. I-14688, I-3642, and PLO 5271, for use in harvesting National Forest timber in T.43N. R.2E. and elsewhere.

Road easement I-12823 was obtained from the Potlatch Corporation to harvest timber from the NE¼NE¼ Section 10, T.43N., R.2E., B.M.

4. Black Rock Ridge-Latour Creek Selection I-15037 made December 22, 1978. There are no ongoing timber sale contracts in this selection area. The Bureau has done timber sale layout and road route work, but no timber has been cruised.

   There are three grazing leases effecting lands within this selection as follows:

Dale M. Bly	76 AUMs @ 1.98/AUM	= $150.48
Christman & Fitzgerald	19 AUMs @ 1.98/AUM	37.62
Nels Vines	40 AUMs @ 1.98/AUM	79.20
		$267.30

   However, these leases also effect lands not selected and could not be separated at this time.

5. There were road easements obtained under serial nos. I-7267, I-016880, I-015308, I-015106, I-016674, I-3792, I-015817, I-017267, I-015866, I-8255, and I-016881 and built to serve lands effected by State Lieu Selection I-15037. Also road rights-of-way I-8975, and I-10208 across National Forest lands and public land were built and used to harvest the Black Rock Timber Sale which was terminated in 1977.

6. On State Selections I-15039 and I-15040 there are no ongoing timber sales, leases, or permits on or after the date of selection application of December 22, 1978.

   However, there were road easements obtained from the State of Idaho to harvest timber from the lands selected under I-15040. This contract was terminated about 1977.

You will note that the Bureau had done all field work prior to State Selection application and was committed to offer the timber for sale. No new sales or permits were prepared after the State Selection appplications were made. Also all sales were planned for 3 to 10 years prior to their sale date.

Most of the land selected have limited grazing values and have no existing leases or permits for other land uses.